IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 31014 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RATIBHAI NAJBHAI MUCHHADIYA - Petitioner(s)
Versus
STATE OF GUJARAT, & 2 - Respondent(s)

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Appearance :
MR UMANG K CHOKSI for Petitioner.
Mr.L.R.Pujari, AGP for the respondents.

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 28/12/2007

ORAL JUDGMENT

1.Rule. Learned A.G.P. Mr. L.R.Pujari waives service on behalf of the respondents.

2. By way of this petition, the present petitioner has challenged the impugned order passed by the

respondent no.3-the Collector of Stamp, Stamp Duty Office, Part.1(2), Polytechnic, Ahmedabad on 31-12-2004.

3. Heard the learned advocate for the petitioner and Mr. L.R.Pujari for the respondents.

4. It is submitted by the learned advocate for the petitioner that the impugned order passed by the respondent no.1 authority is a cyclostyled type and non speaking order which reveals total non application of mind and that unreasonably excessive market value has been fixed for the disputed property by the respondent authority. According to the learned Counsel,no reasons have been assigned by the respondent-authority for enhancement in the market value of the property than what is referred to in the sale-deed. It has also been contended by the learned Counsel that no opportunity of hearing was afforded to the petitioner before passing the impugned order. It has also been contended that the relevant guidelines have also not been followed by the respondent-authority, and therefore, the decision taken by the respondent -authority for arriving at higher market value is absolutely arbitrary in nature. It is finally contended that the respondent-authority has fixed the valuation of the property ignoring the Bombay Stamp (Determination of Market Value of Property)Rules, 1984,as also the guidelines provided by the Bombay Stamp Act of 1958, and therefore, the respondent authority can fix the valuation of the property using different yardsticks which would tantamount to discrimination. It is

submitted by the learned Counsel that in a casual manner the respondent authority has fixed the market value of the property in question to the tune of Rs.24,77,300/-,and therefore, deficit stamp duty of Rs.3,25,825/- and fine of Rs.250/- was required to be paid to the authorities, and accordingly notice was sent to the petitioner. It is submitted by him that the respondent authority has not considered the fact that the petitioner has purchased the property in question by paying Rs.1,50,000/- at a market value and the respondent authority has also not considered the market value was per Jantri decided by the State. Therefore, it is prayed that the decisions of the respondent authorities are required to be quashed and set aside.

5. In support of his submission, the learned Advocate has placed reliance on – (i) (2006) 12 GHJ 533 (Vinaybhai P. Patel v. State of Gujarat), (ii) (2006) 12 GHJ 646 (Manubhai Vaghjibhai Dabhi vs. State of Gujrat and Anr.) and (iii) 2006(12) GHJ 538 (A.P.M.C.., Patan vs. State of Gujarat and Anr, (iv) 2006(2) GLR 1735 (New Kalindi Karnavati Co.op.Housing Society Ltd. vs. State of Gujarat and Ors.)

6. As can be seen from the aforesaid authorities, this Court has time and again rendered decisions for quashing and setting aside the cyclostyled type orders and non speaking orders by holding that it is the duty vested in the respondent authorities to justify its say for higher market value for the land in question. In the instant case, it is clear that

the impugned order does not even recite the basis or calculation for arriving at the market value, and therefore, the impugned order cannot be sustained in the eye of law. Reference in this connection may also be had to the decision rendered in the case of Bal Nalkantha Khedoor Mandal vs. State of Gujarat decided on 26th July, 1999 in Special Civil Application no.1731 of 1999 (Coram: Hon'ble Chief Justice Mr. K.G.Balkrishnan and Hon'ble Mr. Justice S.D.Dave).

7. Having considered the aforesaid authorities and for the reasons as discussed above, in my considered opinion, the impugned orders are passed in breach of the provisions of the Act,1958 and the Rules, 1984 as they are thoroughly non speaking orders and no reasons have been assigned. In that view of the matter, the petition is allowed. The impugned order dated 31-12-2004 passed by the respondent no.3-authority is hereby quashed and set aside. The matter is remanded to the respondent no.3-authority for taking a fresh decision and for passing a speaking order as per the Act,1958 read with the Rules, 1984 and after giving an opportunity of hearing to the petitioner. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.D.Shah,J.)

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